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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
FRESNO DIVISION

9 NATURAL RESOURCES DEFENSE)
COUNCIL, et al.,) Case No.: 05-CV-01207 (OWW) (LJO)
10)
11 Plaintiffs,)
v.) **Federal Defendants' Notice of Motion and**
12) **Motion for Extension of Time or, in the**
DIRK KEMPTHORNE et al.,) **Alternative, for Relief from Court's Order**
13) **under Fed. R. Civ. P. 60(b)**
Defendants.)
14)
SAN LUIS & DELTA MENDOTA) Hearing: August 29, 2008
15 WATER AUTHORITY, et. al.) Time: 9:00 a.m.
) Courtroom: 3
16 Defendant-Intervenors) Judge: Hon. Oliver W. Wanger
17 _____)

18 **Notice of Motion**

19 The Federal Defendants hereby notify the Court and the parties that the following Motion
20 for Extension of Time or, in the Alternative, for Relief from Court's Order under Fed. R. Civ. P.
21 60(b) will be heard by the Honorable Oliver W. Wanger, United States District Court for the
22 Eastern District of California, on August 29, 2008, at 9:00 a.m. in Courtroom 3, 2500 Tulare
23 Street, Fresno, California.
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1 **Motion for Extension of Time or, in the Alternative,**
2 **for Relief from Court’s Order under Fed. R. Civ. P. 60(b)**

3 The Court’s interim remedial order in this matter remanded the biological opinion on the
4 “Operations Criteria and Plan” (“OCAP”) for the coordinated operation of the Central Valley
5 Project (“CVP”) and State Water Project (“SWP”) to the United States Fish and Wildlife Service
6 (the “Service,” “FWS”) “for further consideration consistent with [the] Court’s orders and the
7 requirements of law.” Interim Remedial Order Following Summary Judgment and Evidentiary
8 Hearing, Docket No. 560 (Dec. 14, 2007), ¶ I.A.1. The order requires this remand to be
9 completed by September 15, 2008, “at which time FWS shall issue a new Biological Opinion . . .
10 on the effects of the operation of the CVP and SWP upon the Delta smelt.” *Id.* at ¶ I.A.1. The
11 Federal Defendants no longer believe that it will be possible to complete this biological opinion
12 by September 15, 2008. As such, the Federal Defendants hereby move this Court for an
13 extension of this deadline until **December 15, 2008** (or, in the alternative, for relief from the
14 Court’s order under Fed. R. Civ. P. 60(b)).

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16 This motion is based on the Federal Defendants’ Memorandum in Support of Motion for
17 Extension of Time or, in the Alternative, for Relief from Court’s Order under Fed. R. Civ. P.
18 60(b). The Federal Defendants have not previously sought any extensions to this deadline, and
19 no extensions to the deadline have been made by the Court.

20 Counsel for the Federal Defendants has conferred with counsel for the other parties. The
21 Plaintiffs do not oppose the proposed extension. Defendant-Intervenor California Department of
22 Water Resources join in this request for extension of time. Defendant-Intervenors and Joined
23 Defendants Glenn-Colusa Irrigation District, Princeton-Codora-Glenn Irrigation District,
24 Provident Irrigation District, Anderson-Cottonwood Irrigation District, City of Redding, M&T
25 Chico Ranch (Pacific Realty Associates), Reclamation District No. 1004, and California Farm
26 Bureau Federation do not oppose the proposed extension. Defendant-Intervenors State Water
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1 Contractors do not oppose the proposed extension. Joined Defendants Carter Mutual Water
2 Company, Howald Farms, Inc., Maxwell Irrigation District, Meridian Farms Water Company,
3 Natomas Central Mutual Water Company, Oji Brothers Farm, Inc., Oji Family Partnership,
4 Pelger Mutual Water Company, Pleasant Grove-Verona Mutual Water Company, Reclamation
5 District 108, Henry D. Richter, River Garden Farms, Sutter Mutual Water Co., Tisdale Irrigation
6 and Drainage Company, and Windswept Land and Livestock Company do not oppose the
7 proposed extension. Counsel for the remaining parties had not responded with their positions by
8 the time that this motion was filed.
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10 Respectfully submitted this 29th day of July, 2008,

11 RONALD J. TENPAS, Assistant Attorney General
12 JEAN E. WILLIAMS, Section Chief

13 /s/ James A. Maysonett

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